

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

FILED
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INDIANA UTILITY
REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF INDIANA)
BELL TELEPHONE COMPANY, INCORPORATED,)
D/B/A AMERITECH INDIANA PURSUANT TO)
I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS FOR) CAUSE NO. 41657
COMMISSION REVIEW OF VARIOUS)
SUBMISSIONS OF AMERITECH INDIANA TO)
SHOW COMPLIANCE WITH SECTION 271(C) OF)
THE TELECOMMUNICATIONS ACT OF 1996.)

JOINT COMMENTS OF THE INDIANA CLECS

Pursuant to the July 12, 2002 Docket Entry, AT&T Communications of Indiana, Inc. ("AT&T") on behalf of itself and its affiliate TCG Indianapolis ("TCG"), WorldCom, Inc., McLeodUSA, and Time Warner of Indiana, L.P. ("Indiana CLECs") by counsel, respectfully comment upon the Remedy Plan adopted by the Illinois Commerce Commission ("ICC") on July 10, 2002 in Docket No. 01-0120 for Ameritech Illinois (hereafter referred to as the "ICC Plan"). In addition, the Indiana CLECs will recommend a few changes to the ICC Plan so the plan can be adapted for use in Indiana, as well as harmonized with the 44 Principles adopted by the Indiana Utility Regulatory Commission ("Commission") in its November 9, 2000 and September 11, 2001 orders. A redlined version of the ICC Plan is attached as Exhibit No. 1 with recommended changes reflected.¹ The CLECs will further respond to the questions posed in the July 12, 2002 Entry, as derived from the April 26, 2002 e-mail from Mr. Karl Henry, of the Commission staff.

¹ Because counsel for the Indiana CLECs could not locate a "Word" version of the ICC Plan, the ICC Plan was converted from a .pdf file to a Word file to redline recommended changes. Thus, while the attached Plan is identical, word for word, to the one ordered by the ICC, the formatting may be slightly different.

I. INTRODUCTION

The Indiana CLECs applaud the Commission's decision to expeditiously review and adopt a performance remedy plan for Ameritech Indiana. An effective remedy plan, with immediate financial consequences for non-compliance, is essential to incent Ameritech Indiana to meet its regulatory obligations to provide nondiscriminatory access to services and facilities, and to ensure the development of competition in Indiana's telecommunications markets. Ameritech Indiana's history of consistently providing substandard service to CLECs demonstrates that Ameritech Indiana needs significant and continuing incentives to provide service at the level required. The ICC Plan provides such incentives. The ICC Plan, if adopted in substantially the same form here, will enable CLECs to exert pressure on Ameritech Indiana in the future to meet the established performance measures. The remedy plan will be the only method to ensure Ameritech Indiana's compliance with performance measures when, and if, Ameritech Indiana receives long distance authorization from the FCC, and Ameritech Indiana's incentives to comply with the 271 checklist requirements to obtain 271 authority no longer exists.

The ICC Plan contains all the elements essential to an effective remedy plan: (1) it strikes an appropriate balance between simplicity and accuracy, and can be operational upon adoption by the Commission; (2) the remedy payments are set at levels necessary to incent Ameritech Indiana to meet its regulatory obligations, and those remedies escalate and accelerate according to the duration and magnitude of poor performance; (3) the remedies are self-executing; (4) the plan is based on a comprehensive set of performance measures that Ameritech also supported in their adoption; (5) the measures are appropriately disaggregated; (6) the structure of the plan is based on an auditable system with verifiable data and processes; (7) the

plan does not excuse extensive poor performance by Ameritech by including an absolute cap on annual remedy payments, and instead has a procedural threshold in place that allows for regulatory review when a certain level of remedy payments is exceeded; and (8) the plan uses a “bright line” for calculating remedies. Complicated statistical methodologies that are used to exclude remedies, such as statistical testing on benchmarks and the “k table” exclusion on remedies, are not part of the ICC Plan.

Because the ICC Plan is based upon the proposal of the ICC staff, and not the CLECs or Ameritech,² the Indiana CLECs attach as Exhibit 2 the testimony and briefs³ of ICC staff in Docket No. 01-0120 since they provide the most detailed explanation of terms, conditions and operation of the ICC Plan

II. THE JURISDICTION OF THE COMMISSION TO ADOPT AN INDIANA-SPECIFIC REMEDY PLAN

Each state commission has the full authority to adopt a remedy plan tailored to the state’s specific requirements. Just as Texas could adopt its own remedy plan (albeit one that is deeply flawed, as the evidence reveals in this case), other states can also implement a plan specific to the state’s unique requirements.

Indeed, the FCC explicitly authorizes adoption of a remedy plan tailored to the unique needs of each state. As the FCC recently stated in its decision granting Section 271 authorization to Bell South in Georgia and Louisiana:

² The Illinois CLECs proposed the “Joint CLEC Remedy Plan”, as the Indiana CLECs did here. Similarly, Ameritech Illinois proposed the Texas Remedy Plan, just like Ameritech Indiana did here. While rejecting both the CLEC and Ameritech proposals, the ICC incorporated the structure and some of the components of the Texas Remedy Plan as well as a number of the elements contained in the Joint CLEC Remedy Plan.

³ The ICC proceeding permitted two rounds of testimony. Testimony of the ICC staff in both rounds are attached. Parties filed briefs and reply briefs, which are also attached. Not attached are the Staff’s brief on exceptions and reply to exceptions, which are a uniquely Illinois practice revolving around proposed edits to the proposed orders. (See, Ill. Adm. Code §200.830).

We have not mandated any particular penalty structure, and we recognize different structures can be equally effective. We also recognize that the development of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time. We note that both the Georgia and Louisiana Commissions anticipate modifications to BellSouth's SQM from their respective pending six-month reviews. We anticipate that these state Commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect actual commercial performance in the local marketplace.⁴

Ameritech will undoubtedly trot out its theory that the Commission should ignore all of the past 271 decisions of the FCC and instead argue that the Commission is somehow prohibited from adopting a plan similar to the ICC Plan. Ameritech will likely argue two points, each of which is meritless.

Ameritech will likely contend that its 'consent' is somehow needed to the plan for it to be adopted. This argument is incorrect as a matter of law and, frankly, makes no logical sense. It is incorrect as a matter of law because the FCC has never posited such a requirement in any past 271 case. It is the responsibility of the state utility commission to recommend whether Ameritech's entry into long distance is in the public interest. As part of this serious responsibility, all prior 271 applications have been accompanied by a remedy plan adopted by the state commissions. A Regional Bell Operating Company ("RBOC") never has been permitted to veto the decision of any state utility commission adopting a remedy plan. Indeed, allowing a RBOC to do so would render the whole purpose underlying the consultation with state utility commissions enshrined in Section 271(d)(2)(B) to be a nullity. Ameritech's argument also makes no logical sense because the FCC has *always* taken the remedy plan recommended by the state utility commission, and *never* modified any element of these plans.

⁴ FCC Georgia/Louisiana 271 Order, paragraph 294. Footnotes omitted.

Ameritech's second argument will revolve around the specific issues in Illinois. Ameritech will likely say that the ICC Plan adopted in Docket 01-0120 is a merger commitment remedy plan that expires in October of 2002. This is correct. However, the ICC made it clear in its order – and then made it *crystal clear* in its July 24, 2002 Amendatory Order – that the remedy plan adopted in Docket 01-0120 will be the Section 271 Plan. The ICC specifically stated:

We note, however, that Ameritech's quest for Section 271 approval has begun and, in its Initial Brief in this docket, it stated that in the Section 271 proceeding it "will present its performance assurance plan to the Commission, and its proposal for continuing that plan beyond the termination date of Condition 30, and the Commission can review the plan as part of its overall assessment of compliance with the competitive checklist of section 271." (Ameritech Initial Brief at 67). In its Brief on Exceptions, Staff raises the concern that in a Section 271 proceeding, the Commission will not have the authority to impose on Ameritech the Remedy Plan that the Commission prefers to be in place. We conclude, therefore, that unless otherwise directed by the Commission, the Remedy Plan adopted pursuant to this Order shall serve as the basis for the aforementioned "performance assurance plan" referenced by Ameritech for Section 271 approval purposes. The Commission does not believe it is in either its own interest or any of the parties' interest to re-litigate the nuances of the Remedy Plan in the current Section 271 proceeding. Therefore, the Commission wishes to clarify that any future reference (in either concurrent or prospective dockets before the Commission) to a Remedy Plan in place in Illinois, either voluntarily or pursuant to Commission Order, shall mean the Remedy Plan adopted pursuant to this Order.

~~Further, in Docket 01-0662, the Commission indicated that it would fully investigate the remedy plan to ensure that the local market remains open to competition and "to guard against backsliding following 271 approval." (Order Initiating Investigation, Docket 01-0662, October 24, 2001, at 3). The Commission, therefore, declines, at least in this proceeding, to extend Condition 30 beyond the expiration date provided for in the Merger Order.⁵~~

⁵ Order, ICC Docket No. 01-0120. The stricken language reflects the sentence deleted in the July 24, 2002 Amendatory Order.

The ICC's July 24, 2002 Amendatory Order struck the first sentence in the second paragraph above. The ICC stated it was doing so to: "make the Order entered on July 10, 2002 reflect the actual intent of the Commission". (The July 24, 2002 Amendatory Order, along with the Memorandum from the ICC ALJs handling the proceeding, are attached as Exhibit No. 3). Thus, absent a complete reversal of its course after rehearing,⁶ the ICC intends that the Docket No. 01-0120 plan be used for Section 271 purposes.

III. ESSENTIAL ELEMENTS OF THE ICC REMEDY PLAN

The Indiana CLECs will not exhaustively analyze the ICC Plan, which speaks for itself. Moreover, the detailed testimony of the ICC staff proposing virtually the same plan is attached as Exhibit 1. Nevertheless, the Indiana CLECs provide some general thoughts on why the ICC Plan is worthy of adoption in Indiana.

An effective remedy plan, with immediate financial consequences for non-compliance, is essential to incent Ameritech Indiana to meet its regulatory obligations to provide non-discriminatory access to services and facilities, and to ensure the development of competition in Indiana's telecommunications markets.

There are several principles that should guide the analysis of whether a remedy plan is sufficient. Those principles are:

1. Remedies must be significant enough to incent Ameritech Indiana to meet its regulatory obligations to provide nondiscriminatory access to services and facilities. The ICC Plan provides for remedies for poor performance that increase with the level of CLEC activity. The ICC Plan potentially generates remedies for all measures, with the exception of certain agreed diagnostic measurements.
2. Remedies must be self-executing. CLECs should not be required to undergo costly and time-consuming litigation when the performance measurements system shows

⁶ It should be noted that the Indiana CLECs – many of whom also participated in the ICC proceeding – may seek rehearing. It should be expected that Ameritech will file for rehearing. The Indiana CLECs commit to filing in this proceeding any rehearing action by the ICC in Docket No. 01-120. Under the ICC's rules, it is expected that a rehearing decision, if any, will be issued no later than August 29, 2002. (See, 83 Ill. Adm. Code 200.880)

discrimination. The FCC has stated that an effective enforcement plan shall "have a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal."⁷

3. To incent nondiscriminatory performance, remedies should escalate and, indeed, accelerate according to the duration and magnitude of poor performance.

4. The remedy plan should be structured so that it is simple to implement and administer.

5. The remedy plan should be based on an appropriate set of measures. There should be a comprehensive set of comparative measures in appropriate activity areas to show a customer's true experience when Ameritech Indiana delivers services, facilities, and support. If key activity areas (e.g., hot cuts, lost orders, etc.) are not captured with a measure, important and often customer-affecting performance problems go unaddressed.

6. The measures should be appropriately disaggregated. If measurement results are aggregated at too high a level, Ameritech Indiana can mask discriminatory performance. The disaggregation should be discrete enough to show performance results based upon dimensions such as products (e.g., UNEs, resale, xDSL, etc.) and geography (e.g., dense urban commercial area, sparsely populated rural area, rapidly growing suburban areas, etc.). Disaggregation should proceed until like-to-like comparisons can be made.

7. The structure of a remedy plan should be based on an audited system with verifiable data and processes. There should be a thorough audit of the performance measurements system by a recognized neutral party who utilizes a disclosed and industry-reviewed methodology before it officially is implemented for the industry. For example, there should be a validation of Ameritech Indiana's processes and systems used for data collection, reporting, storage, and retrieval. An effective plan should provide reasonable assurances that the reported data is accurate. *See* BA-NY Order, at para. 433.⁸

8. An appropriate statistical methodology to declare parity/disparity should be in place. The ICC Plan eliminates egregiously anti-competitive statistical exclusions that allow Ameritech to skirt paying remedies where bad service is provided.

⁷ See, *In the Matter of: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York* (the "BA-NY Order"), CC Docket No. 99-295, Rel. December 22, 1999, at Para. 433.

⁸ The Indiana Master Test Plan provides for such an audit.

IV. THE ICC REMEDY PLAN IS GENERALLY CONSISTENT WITH THE COMMISSION'S 44 PRINCIPLES.

The ICC Plan generally meets the 44 Principles adopted by the Commission. Where not entirely consistent, the ICC Plan can be readily modified to meet all of the 44 Principles.

These comments address the ICC Plan's compliance with the Commission's Principles. The structure is based upon the one used in Attachment A to the September 11, 2001 Order. Thus, the Commission's 44 Principles are divided into three categories reflecting the Commission's prior analysis of the differences between Ameritech's Texas Plan proposal and the Joint CLEC Plan.

A. Principles 1-3, 5, 8-11, 14-16, 20, 21, 25-27, 32, 36, 38, 39 and 41

The Commission characterized principles 1-3, 5, 8-11, 14-16, 20, 21, 25-27, 32, 36, 38, 39 and 41 as ones in which the CLEC Plan and Texas Plan were in substantial agreement. The ICC Plan explicitly complies with all of those principles, save Principles 8 and 38 which are relating to change management. The Indiana CLECs support the inclusion of requirements in the Indiana Plan that explicitly meet Principles 8 and 38, as outlined in the April 26, 2002 e-mail from Mr. Karl Henry. The Indiana CLECs recommend the Commission adopt Mr. Henry's proposals for change management in their entirety. Moreover, the Indiana CLECs further agree with Mr. Henry's recommended performance measurement data and reporting requirements that were also attached to the April 26, 2002 e mail, to the extent the Commission believes the ICC Plan is insufficient.

It should be noted that the dispute resolution process used in the ICC Remedy Plan is, by necessity, state-specific. The Indiana CLECs recommend that the Indiana Plan reference the

“Rocket Docket” process the Indiana Commission has for interconnection related disputes and apply that process to any disputes relating to the Indiana Plan.

B. Principles 22, 23, 35, 40, and 42-44

The Commission described Principles 22, 23, 35, 40, and 42-44 as ones in which the CLEC Plan and Ameritech’s Texas Plan had minor disagreement. The ICC Plan meets Principles 22, 23, 35, and 42. The Indiana CLECs support inclusion of requirements in the ICC Plan that meet principles 40, 43 and 44. As discussed above, the Indiana CLECs support the change management proposals made by Mr. Henry of the Commission staff.

C. Principles 4, 6, 7, 12, 19a, 19b, 24, 29, 31, 33, 34, and 37⁹

Principles 4, 6, 7, 12, 19a, 19b, 24, 29, 31, 33, 34, and 37 are described by the Commission as those in which there is significant disagreement between the Texas and CLEC Plans. As will be seen from the discussion below, most, but not all, of these principles are met by the ICC Plan.

The ICC Plan meets Principle 4. The ICC Plan is consistent with the FCC’s factors described in prior 271 decisions. Indeed, as discussed earlier, the ICC clearly indicates in its order that the plan adopted in Docket No. 01-0120 is the Section 271 plan for Ameritech. (Order, pp. 20-22).

The ICC Plan generally complies with Principles 6, 7 and 12. The Commission ruled in its September 11, 2001 Order that it is “leaning toward weighting of” performance measurements. (Attachment A, p. A-30). The Commission also “is leaning toward per-

⁹ Since Attachment A to the September 11, 2001 Order takes Principles 13, 17, 18, 28 and 30 “off the table”, these comments will not discuss whether the ICC Plan meets these former requirements.

occurrence rather than per-measure remedies”. (Id.). The ICC Plan uses a per-occurrence methodology and calls for weighting of performance measurements for purposes of assessing remedies. The ICC Plan, however, does not use a minimum penalty applicable to small CLECs, as recommended in the September 11, 2001 Order. (Attachment A, pp. 32-33). The Indiana CLECs do not affirmatively propose changes to the ICC Plan incorporating such a structure in Indiana, but do not oppose its adoption, if the Commission so wishes.

The ICC Plan generally complies with Principle 19a. The ICC Plan strictly defines where mitigation for Acts of God is appropriate. More importantly, the ICC Plan does not allow Ameritech to withhold remedies unilaterally. It should be noted that the ICC Plan does not necessarily follow each and every requirement used in the Verizon New York Remedy Plan for such withholding; nevertheless, the Indiana CLECs believe the ICC mechanism is sufficient.

The ICC Plan generally meets Principle 19b. The ICC Plan does not contain two huge exclusions to forgive Ameritech’s payment of remedies: the k table exclusion on parity measures and statistical testing on benchmarks. The ICC Plan uses the z score as originally recommended by Ameritech in the Texas Plan, so this should adequately protect any legitimate concerns Ameritech may have about materiality. The ICC Plan is not, however, identical with the Colorado Plan’s treatment of z scores discussed in the September 11, 2001 Order. (Attachment A, p. A-38). The Indiana CLECs nevertheless recommend that, for purposes of administrative simplicity, the z score used in the ICC Plan be retained in Indiana.

Principle 24 is reflected in the ICC Plan. The ICC Plan meets the Commission’s requirement that Ameritech’s “CLEC” affiliates should be treated as CLECs for reporting and disaggregation purposes. (See, Attachment A, p. A-40). It should be noted that the Indiana Court of Appeals affirmed the Commission’s decision requiring that KPMG’s OSS test of

Ameritech's OSS include its required provision of resold xDSL transport to ISPs. Hence, it is necessary for the Commission to adopt performance measures and associated business rules, along with remedies. The Indiana CLECs have no proposals to make on xDSL measures at this time, but reserve the right to propose measurements as part of the ongoing six month performance measure review process. The Indiana CLECs certainly do not advocate commencement of a collaborative addressing this issue now, if such activity could result in delay of adoption of a permanent remedy plan for Ameritech Indiana.

The ICC Plan generally meets Principle 29. The ICC Plan uses a procedural cap of 36% of Ameritech's total annual net return, as recommended by the Commission. (Attachment A, p. A-44). The Indiana CLECs advocate use of this cap in Indiana. While a higher cap may be desirable, it is more useful to the CLECs that the Plan used here be easy to administer. Since the permanent remedy plans adopted in Michigan and Wisconsin, along with the interim plan in Ohio, all use a 36% cap, the Indiana CLECs therefore recommend its retention in Indiana. It should be noted that the ICC Plan is not completely consistent with Principle 29. The ICC Plan uses a monthly procedural cap of 1/6 of the annual cap, whereas the Commission cites a Colorado proposal that the monthly cap be 1/12 of the annual procedural cap. (*See, Id.*, p. A-41). The Indiana CLECs obviously prefer the ICC Plan's cap – which is procedural, like the annual cap – as it will incent Ameritech to provide adequate service each and every month, and not allow the company to provide horrendous service in one month that may necessitate more robust remedy payments.

The ICC Plan complies with Principle 31. The ICC Plan requires Ameritech to pay remedies by check or other form of cash. The Commission seems to not take a strong¹⁰ position on whether the payment should be via bill credit or check, so long as the payment can be adequately tracked. (Attachment A, p. A-43). The Indiana CLEC prefer that the payment be by check or some other form of cash, as ordered by the ICC, as noted in prior comments. Indeed, cutting a check will attract more attention from Ameritech executives and therefore represents a stronger incentive than a credit buried in a multi-page bill.

The ICC Plan meets much, but not all, of Principle 33 and meets most of Principle 34. The ICC Plan does use an escalation methodology that steps-up payments when Ameritech offers chronically poor wholesale service. It does not use the same step-up/step down methodology used in Colorado, as mentioned in the September 11, 2001 Order. (Attachment A, p. A-45). The ICC Plan doubles remedy payments for both Tier I and Tier II. The Commission seems to take the position that imposition of a multiplier is left for the future, depending upon Ameritech's performance. (Id., p. 46). The Indiana CLECs support immediate use of the ICC Plan's multiplier, for the simple reason that almost year has passed since the September 11, 2001 Order, and based upon KPMG's many performance metrics exceptions and observations, Ameritech is offering remarkably poor service. The KPMG reports most relevant to this discussion are Exception Reports 19, 20, 26, 41, 42,¹¹ 47, 47 Version 2, 108, 108 Version 2, 113, and 113 Version 2, and observation reports 465, 467, and 468, which are attached as Exhibit No. 4. These exceptions all apply to the Indiana OSS test, and reveal a number of KPMG-identified

¹⁰ See, Attachment A, page A-44, where the Commission seems to lean towards requiring payment by check; compare with Attachment A, page A-43, where no preference is expressed.

¹¹ On June 27, 2002, KPMG closed Exception 42. The problem however, was not resolved. According to the disposition report, which is part of Exhibit No. 4, the remaining issues involving inadequate edits and controls to ensure the data is received and successfully loaded are now part of Exception Report 47, Version 2.

flaws in Ameritech's performance measurement systems, processes and procedures, including the following:

- (1) Ameritech's data retention policies regarding source data do not enable thorough and complete audits to be conducted or facilitate the resolution of potential disputes which may arise between the CLECs, Ameritech and the regulatory agencies regarding the correct reporting of performance measurement results.
- (2) The procedures and controls Ameritech has in place for performance measurement calculation and reporting are inadequate.
- (3) Ameritech has repeatedly restated performance measurement results without notifying CLECs and regulators in a consistent manner.
- (4) Ameritech's metrics change management process does not require the identification of changes to source data systems that impact metrics reporting and the communication of those changes to relevant parties.
- (5) Ameritech failed to extract all the April 2001 data from the Regulatory Reporting System (RRS) required to calculate certain performance measurements.
- (6) Several Ameritech Performance Measurement reporting systems lack the controls and edits to ensure that data is received and successfully loaded into these Performance Measurement reporting systems.
- (7) Ameritech fails to provide accurate notices of restatements on its website news page.
- (8) KPMG is unable to replicate Ameritech's January 2002 reported results for certain key performance measurements.¹²

¹² KPMG has issued additional exception reports addressing Ameritech's repeated performance failures (e.g., Exception Reports 132, 157 and 159). The reports discussed here comprise examples of Ameritech's chronic failures to offer adequate wholesale service to CLECs that are reported by KPMG, with many of these pending for over nine months.

The ICC Plan does not contain the root cause analysis, as explicitly proposed in the September 11, 2001 Order. (Id.). It instead calls for mini-audits. The CLEC's certainly do not oppose the root cause analysis methodology used in Colorado; nor do they oppose use of the raw data/root cause analysis proposed by Mr. Karl Henry and the July 12, 2002 docket entry. For purposes of simplicity, the Indiana CLEC's' redline do not reflect these proposals, since frankly the Commission and its staff likely would be more familiar with the Colorado proposal and how it should be integrated into the final remedy plan.

Finally, the ICC Plan is not identical to the provision in Colorado that calls for open-ended (uncapped) payments of Tier I penalties for deficient performance towards a specific CLEC. (Attachment A, p. A-47). The ICC Plan (specifically Section 7.3.1) imposes a procedural cap, with a proceeding following to determine if more should be paid. Nevertheless, the CLEC's do not oppose adoption of this methodology, and believe it would provide an excellent incentive for Ameritech not to selectively target CLEC's (such as ones new to the market or perhaps CLEC's that have taken the most customers away from Ameritech) against whom to discriminate by offering particularly poor wholesale service.

The ICC Plan generally meets the intent behind Principle 37. The ICC Plan is not the exclusive remedy available to CLEC's, but recognizes that payments made pursuant to the plan "are a reasonable approximation of any contractual damage resulting from a non-compliant performance measure." (See, Section 6.1 of the ICC Remedy Plan). The Commission's September 11, 2001 Order appears to apply a similar principle that some remedies may offset remedies payable to CLEC, with Ameritech first required to fulfill a test. (Attachment A, p. A-49). This requirement is not, however, uniform in the Commission's order. The Indiana CLEC's

can support either the ICC's rather general methodology or the specific one offered in the September 11, 2001 Order.

V. Seven Critical Elements that Must be Included in the Remedy Plan

The Commission's July 12 docket entry also identified seven elements that the CLECs believe to be critical issues that must be addressed in the remedy plan in this docket. Those issues include:

1. a mechanism and schedule for the delivery of monthly performance data reports;
2. parity with a floor/ceiling (minimum levels of service);
3. initiation of root cause analysis for continued poor performance;
4. "remedied" performance measures with penalties for change management for pre-ordering, ordering, provisioning, maintenance and repair, and billing OSS interfaces;
5. a mechanism for assuring the integrity and the retention of both raw/source/untransformed data and data used directly in reporting results, as well as data used to calculate and report any subsequent restatement of results;
6. a procedure for defining and calculating remedies or penalties for repeated restatements of performance results for a given performance measure(s), including a remedy or penalty structure and actual remedy or penalty amounts; and
7. a step-up/step-down escalation/de-escalation mechanisms or multipliers for severe or chronic poor performance.

A. Mechanism and Schedule for Delivery of Monthly Performance Data Reports

The delivery mechanism for monthly performance data reports to CLECs should continue to be SBC's CLEC website and that deadline for "delivery" (posting of the data on the CLEC website) of the monthly performance data reports for the prior month should be no later than 5:00 p.m. of the last business day of the following month. The delivery mechanism for the IURC staff should be whatever mechanism Staff deems necessary to ensure its ability to adequately monitor the performance data.

B. Parity With a Floor

An effective remedy plan must include minimum service levels in conjunction with parity measures, which concept has been coined as “parity with a floor.” “Parity” means that Ameritech Indiana must be required to provide wholesale service to its competitors at a quality level no worse than the quality of service that Ameritech Indiana provides to its retail customers. A “floor” is equally important part of the remedy plan because it means that SBC/Ameritech must meet an objective standard of quality for all of its customers, both retail and wholesale, that results in an adequate level of service quality for all Ameritech Indiana customers. The floor is the measure of service quality below which Ameritech Indiana’s services must not be allowed to fall without significant, meaningful consequences.

Minimum quality standards are important for many reasons. Simply stated, parity at poor performance is still poor performance. Poor wholesale service, even at parity with Ameritech Indiana’s retail performance, is harmful to CLECs and their end user customers. First, it often delays a CLEC’s ability to recover its costs because the CLEC cannot bill a customer for services it does not deliver while waiting for Ameritech Indiana to install or repair its lines. Second, poor wholesale performance imposes additional personnel costs on the CLEC. These costs include additional staffing to deal with angry customers and to work through the ILEC escalation process to resolve the service problem. Third, poor wholesale service exposes the CLEC to potential liability for harm to the CLEC’s customer. Incurring these additional operating expenses poses a significant financial hardship on CLEC. Finally, and most problematic, it damages the CLEC’s reputation, which has long-term impacts on competition. As if providing poor wholesale performance were not enough, Ameritech Indiana adds insult to injury by running television advertisements that deride CLECs’ ability to provide quality service.

The key concept is that by being the sole provider of network elements, especially the last mile loop, Ameritech Indiana controls the facilities, systems and workforce needed for CLECs to provide quality service to end user customers. There must be consequence to Ameritech Indiana to its failure to provide a minimum level of wholesale service quality since there is no “market”

incentive to do so since Ameritech Indiana continues to have a monopoly on its last mile bottleneck facilities to the overwhelming number of access lines in its local exchanges.

Finally while it would be the most beneficial for CLECs and their end users to impose minimum service levels for each performance metric in the remedy plan, CLECs are willing to limit application of the parity with a floor standard to key customer impacting measures. A list of such key metrics was filed by the CLECs in Illinois Docket No. 01-0120 and is attached hereto as Exhibit 5.

C. Initiation of Root Cause Analysis of Continued Poor Performance.

CLECs believe that a remedy plan must have a defined process for root cause analysis of continued poor performance known as “gap closure.” Experience with SBC has shown that it is unwilling to engage in gap closure discussions with a CLEC despite continued poor wholesale performance. Perhaps the most egregious example is when SBC-SWBT refused to engage in gap closure discussions even when its OOS > 24 hours performance was less than 50% for three months.

The customer benefits of requiring such a process are obvious. Persistent customer impacting service affecting problems can have a debilitating effect on CLECs as they expend unnecessary resources to address the wholesale problems. Moreover, gap closure discussions should provide an opportunity for both the CLEC and Ameritech Indiana to improve their processes and build a better working relationship which will better serve the end user customers.

The general requirements of an acceptable gap closure process are that:

- a. Ameritech Indiana must engage in gap closure discussions with a CLEC if its wholesale performance on a given PM fails to meet a benchmark or parity requirement for three (3) consecutive months or if it is below the minimum service level for two (2) consecutive months
- b. Ameritech Indiana must provide a root cause analysis, a detailed plan to close the gap to the requisite performance metric benchmark or parity level, which plan must include a time line of events leading to successful gap closure.

- c. The gap closure discussions must be completed no later than thirty (30) days after a CLEC requests such discussions.
 - d. If the CLEC is not satisfied with the gap closure response of Ameritech Indiana, the CLEC has the right to escalate to the Senior Management level of SBC-Ameritech.
- D. Remedied Performance Measures With Penalties For Change Management for Pre-ordering, Ordering, Provisioning, Maintenance and Repair, and Billing OSS Interfaces

CLECs believe there should be performance metrics with attaching remedies relate to change management for Pre-ordering, Ordering, Provisioning, Maintenance and Repair, and Billing OSS Interfaces. The importance of such metrics and the need for attaching remedies to these metrics has become abundantly clear during the roll out of LSOG 4 and LSOG 5. The roll-out of each of these new OSS interfaces has been plagued with mis-documentation problems, questions whether the Joint Test environment was actually ready for testing within the change management guidelines, significant numbers of defects in the Joint Test environment, questions whether the Joint Test environment actually mirrors the production environment, etc.

Several CLECs have suffered greatly as a result of these problems. CLECs have had to incur extraordinary internal resources to deal with recoding their systems on numerous occasions because of Ameritech's failure to have properly documented its new version requirements. CLECs have been forced to radically change their business plans because a new OSS release was not ready as anticipated. CLECs expect that had Ameritech been subject to performance metrics with remedies attached for failing to meet those metrics that the roll out of LSOG 4 and LSOG 5 would have been smoother. Mismanaging the new release of an OSS interface can have the most devastating impact on local competition. CLECs submit that carefully crafted PMs for the change management process in this area is warranted and should be developed during the six-month review process.

E. Mechanism for Assuring Integrity and the Retention of Both Raw/Source/Untransformed Data

The best mechanism for assuring data integrity is to have KPMG continue unabated the 3rd party testing process agreed upon in 2000 by Ameritech which process required the full replication of the performance data. This is the best means by which to assure that the entire data collection and retention process of Ameritech is fully documented and understood. Once that process is completed, it should be much easier to assure data integrity and create proper data retention processes for Raw/Source/Untransformed Data. Another critical element is the requirement for an annual audit and mini-audits. A CLEC should be permitted to request mini-audits on particular PMs during the year separate from the annual audits, and the CLEC should be entitled to pick the auditor. CLECs would be responsible for the cost of the mini-audit, but Ameritech Indiana should be required to reimburse the CLEC if any problems are discovered during the mini-audit process. Finally, an important part of the process is to ensure that all CLECs are made aware of problems discovered during any audit process.

F. A Procedure for Defining and Calculating Remedies for Repeated Restatements of Performance Results

There is an ongoing problem with restatements of performance data and the resulting implications on remedy plan payments. CLECs reasonably assume that the performance data restatement problem should substantially improve once the KPMG performance data replication process is completed and the data collection and retention process problems are presumably fixed as a result of the third party testing process. While there is merit in establishing remedies for repeated restatements of performance data, CLECs are concerned that such remedies may actually incent Ameritech Indiana to avoid restatements rather than to make them. If a remedy scheme can be devised that adequately encourages Ameritech Indiana to accurately record and report performance data the first time without also providing an incentive to ignore necessary restatements, CLECs submit that such a remedy should be devised.

G. Step Up/Step Down Mechanism

CLECs support inclusion of Step Up/Step Down Mechanisms in the final remedy plan, otherwise known as "sticky duration." The longer a wholesale service quality problem goes on, the more impact it has for a CLEC. More importantly, the sticky duration concept forces Ameritech Indiana to fix the underlying problem rather than merely throwing extra workforce resources at a problem for a short period of time just to avoid a remedy payment. Thus, sticky duration encourages the proper reaction of implementing meaningful process improvements rather than workforce manipulation.

VI. **CONCLUSION**

The Indiana CLECs urge the Commission to expeditiously adopt a permanent remedy plan for Ameritech Indiana. As is stated herein, the ICC Plan is consistent with virtually all of the Commission's 44 Principles. In those rare instances in which the ICC Plan does not explicitly meet the Commission's Principles, the CLECs support inclusion of such requirements in the final order in this proceeding. Moreover, the Indiana CLECs do not oppose inclusion of the recommended changes proposed by Commission Staff member Mr. Karl Henry in his April 26, 2002 e-mail.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 2nd day of August, 2002, copies of the foregoing Joint Comments of the Indiana CLECS were mailed by first-class United States mail, postage prepaid to:

Anne E. Becker
Office of the Utility Consumer Counselor
Indiana Government Center North, Room N501
100 N. Senate Av.
Indianapolis, IN 46204-2208

And to all other counsel of record via e-mail service.

Nikki Shultz / ejk
Nikki G. Shultz

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IURC Cause No. 41657

Exhibit 1

MODIFIED AMERITECH ILLINOIS/INDIANA PERFORMANCE REMEDY PLAN

This Performance Remedy Plan sets forth the terms and conditions under which Illinois/Indiana Bell Telephone Company ("Ameritech Illinois/Indiana" or "Ameritech") will report performance to CLEC and compare that performance to Ameritech's own performance or its affiliate's performance or benchmark, whichever is applicable. This document further provides for enforcement through liquidated damages and assessments.

- 1.0 Ameritech agrees to provide CLEC a monthly report of performance for the performance measures approved in Cause No. 41657 listed in Appendix 1. Ameritech will collect, analyze, and report performance data for these measures in accordance with Ameritech's Performance Measurement Business Rules, as presented approved by the Illinois/Indiana Utility Regulatory Commerce Commission for approval by the Joint Petition in Cause No. 41657 Docket 01-0120. In addition, this Plan incorporates new change management requirements, as contained in Appendix I. [The Indiana CLECs recommend that Mr. Henry's recommended change management alterations go into the Appendix] Both the performance measures and the business rules are subject to modification in accordance with section 6.4 below regarding six-month reviews. Ameritech further agrees to use this two-tiered enforcement structure for performance measurements provided for in this document. Appendix 1 hereto identifies the measurements that belong to Tier-1 (payable to CLECs) or Tier-2 (payable to the state) categories, which are further identified as the High, Low and Medium groups as those terms
- 1.1 Ameritech will not levy a separate charge for provision of the data to CLEC called for under this document. Upon CLEC's request, data files of CLEC's raw data, or any subset thereof, will be transmitted to CLEC. If CLEC's request is transmitted to Ameritech on or before the last day of the month for which data is sought, Ameritech shall provide the data to CLEC on or before then 20th day of the month pursuant to mutually acceptable format, protocol, and transmission media. If CLEC's request is transmitted to Ameritech after the last day of the month for which data is sought, Ameritech shall provide the data to CLEC within 20 days of receipt pursuant to mutually acceptable format, protocol, and transmission media. Notwithstanding other provisions of this Agreement, the Parties agree that such records will be deemed Proprietary Information. [The Indiana CLECs recommend that the Commission insert Mr. Henry's recommended changes here regarding raw data.]
- 2.0 Ameritech will use a statistical test, namely the "Z-test," for evaluating the difference between two means (Ameritech or its affiliate and CLEC) or percentages, or the difference between two ratios for purposes of this document. Ameritech agrees to use the Z-tests as outlined below as the statistical tests for the determination of parity when the results for Ameritech or its affiliate and the CLEC are compared. The Z-tests are applicable if the number of data points are greater than or equal to 30 for a given disaggregation category. In cases where benchmarks are established, the determination of compliance is through a non-statistical test which compares the measured performance delivered to the CLEC and the applicable benchmark. For testing compliance for measures for which the number of data points are 29 or less, the use of permutation tests as outlined below may be used. Parity and benchmark tests and the corresponding sample size requirements are summarized in the following Tables.

Table 1: Tier 1 Parity Test

Sample Size	Test	Non-compliant
$\text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 30$	Z Tests (3.1)	$Z > Z^c$
$\text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} < 30$	Permutation (3.2)	$Z > Z^c$

Table 2: Tier 2 Parity Test

Sample Size	Test	Non-compliant
$\text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 30$	Z Tests (3.1)	$Z > Z^c$
$30 > \text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 10$	Permutation (3.2)	$Z > Z^c$
$10 > \text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 1$	No Test	N/A

Table 3: Tier 1 Benchmark Test

Sample Size	Test	Non-compliant
$n_{\text{CLEC}} > 1$	Non-statistical Test (4.1)	$Z > Z^c$

Table 4: Tier 2 Benchmark Test

Sample Size	Test	Non-compliant
$n_{\text{CLEC}} \geq 10$	Non-statistical Test (4.1)	$Z > Z^c$
$n_{\text{CLEC}} < 10$	No Test	N/A

3.0 Statistical Parity Testing

For purposes of this document, performance for the CLEC on a particular sub-measure (disaggregated level) will be considered in compliance with the parity requirement when the measured results in a single month (whether in the form of means, percents, or ratios) for the same sub-measurement, at equivalent disaggregation, for both Ameritech or its affiliate and CLEC are used to calculate a Z-test statistic and the resulting value is no greater than the critical Z value ("Zc") as defined below.

3.1 Z Test:

Type I Error: $\alpha = 5\%$,
Z-Critical: $Z^c = 1.645$.

Performance is non-compliant with the parity requirement if and only if $Z > Z^c$, where Z values for different types of performance measurements are calculated as defined below.

3.1.1 For Measurement results that are expressed as Averages or Means:

Modified Z = (DIFF) / σ_{DIFF}

Where;

DIFF = $M_{ILEC} - M_{CLEC}$

M_{ILEC} = ILEC Average

M_{CLEC} = CLEC Average

$\sigma_{DIFF} = \text{SQRT}[\sigma_{ILEC} (1/n_{CLEC} + 1/n_{ILEC})]$

σ_{ILEC}^2 = Calculated variance for ILEC.

n_{ILEC} = number of observations or samples used in ILEC measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

3.1.2 For Measurement results that are expressed as Percentages or Proportions:

Step 1:

$$P = \frac{(n_{ILEC}P_{ILEC} + n_{CLEC}P_{CLEC})}{n_{ILEC} + n_{CLEC}}$$

Step 2:

$$\sigma_{P_{ILEC}-P_{CLEC}} = \text{sqrt}[[p(1-p)]/n_{ILEC} + [p(1-p)]/n_{CLEC}]$$

Step 3:

$$Z = (P_{ILEC} - P_{CLEC}) / \sigma_{P_{ILEC} - P_{CLEC}}$$

Where: n = Number of Observations

P = Percentage or Proportion

3.1.3 For Measurement results that are expressed as Rates or Ratios:

$$Z = (DIFF) / \sigma_{DIFF}$$

Where;

$$DIFF = R_{ILEC} - R_{CLEC}$$

$$R_{ILEC} = \text{num}_{ILEC} / \text{denom}_{ILEC}$$

$$R_{CLEC} = \text{num}_{CLEC} / \text{denom}_{CLEC}$$

$$\sigma_{DIFF} =$$

$$\text{SQRT} \{ [(\text{num}_{ILEC} + \text{num}_{CLEC}) / (\text{denom}_{ILEC} + \text{denom}_{CLEC})] * (1 / \text{denom}_{CLEC} + 1 / \text{denom}_{ILEC}) \}$$

- 3.1.4 In calculating the difference between the performances, the formula proposed above applies when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{CLEC} - M_{ILEC}$, $P_{CLEC} - P_{ILEC}$, and $R_{CLEC} - R_{ILEC}$).

3.2 Small Sample Parity Test

For Tier 1 parity tests with less than 30 observations, Ameritech will, in most circumstances, use the permutation tests outlined below. In the limited circumstances where Ameritech does not have access to the underlying transaction-by-transaction data required for the permutation test, Ameritech will apply the Z test as described in Section 3.1.

3.2.1 Permutation Tests

Type I error: $\alpha = 5\%$,

Z-Critical: $Z^c = 1.645$.

The performance is non-compliant with the parity requirement if and only if $Z > Z^c$, where permutation Z values for different types of performance measurements are calculated as defined below.

For Percentages, the Fisher Exact Permutation Test will be used (See Business Rules).

For Averages and Ratios, the following Permutation analysis will be applied to calculate the z-statistic using the following logic:

- (1) Choose a sufficiently large number T.

- (2) Pool and mix the CLEC and ILEC data sets
- (3) Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, (which is equal to the size of the original ILEC data set or n_{ILEC}).
- (4) Compute and store the Z-test score (Z_S) for this sample.
- (5) Repeat steps 3 and 4 for the remaining T-1 sample pairs to be analyzed. (If the number of possibilities is less than 1 million, include a programmatic check to prevent drawing the same pair of samples more than once).
- (6) Order the Z_S results computed and stored in step 4 from lowest to highest.
- (7) Compute the Z-test score for the original two data sets and find its rank in the ordering determined in step 6.
- (8) To calculate P, divide the rank of the Z-test score as determined in step 7 by the number of total runs executed. ($P = \text{rank}/T$).
- (9) Using a cumulative standard normal distribution table, find the value Z_A such that the probability (or cumulative area under the standard normal curve) is equal to P calculated in step 8.

Compare Z value with the critical z value (Z^c). If $Z > Z^c$, then the performance is non-compliant.

- 3.2.2 In calculating the difference between the performances, the formula proposed above applies when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{CLEC} - M_{ILEC}$, and $R_{CLEC} - R_{ILEC}$)'
- 3.2.3 Ameritech and CLECs will provide software and technical support as needed by Commission Staff for purposes of utilizing the permutation analysis. Any CLEC who opts into this plan agrees to share in providing such support to the Commission Staff.

4.0 Non-statistical Benchmark Testing

For purposes of this document, performance for the CLEC on a particular sub-measure (disaggregated level) will be considered in compliance with the benchmark requirement when the measured results in a single month (whether in the form of means or percentages) for the same sub-measurement, at equivalent disaggregation, for CLEC

are used to calculate a Z value and the resulting value is no greater than the critical Z value (Z^c) as defined below.

4.1 Z-Critical: $Z^c = 0$.

Performance is non-compliant with the benchmark requirement if and only if $Z > Z^c$, where benchmark Z values for different types of performance measurements are defined as below.

4.1.1 For Measurement results that are expressed as Averages or Means:

Benchmark $Z = B - M_{CLEC}$,

where;

B = Benchmark Average or Mean,

M_{CLEC} = CLEC Average.

4.1.2 For Measurement results expressed as Percentages or Proportions:

Benchmark $Z = 100(B - P_{CLEC})$

where;

B = Benchmark Percentage or Proportion,

P_{CLEC} = CLEC Percentage or Proportion.

4.1.3 In calculating the difference between the performances, the formula proposed above applies when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance, the order of subtraction should be reversed. (i.e., $M_{CLEC} - B$ and $P_{CLEC} - B$).

5.0 Overview of Enforcement Structure

5.1 Ameritech agrees with the following methodology for developing the assessment structure for Tier-1 and Tier-2:

5.2 Ameritech will pay the CLEC, according to the terms set forth in this document, in the form of a check or other form of cash, in full, within 30 days following the reporting of a failed performance measure. Interest on any payments due and owing shall commence on the 31st day of non-payment, at the interest rate of prime plus one.

5.3 Payments made apply to Tier-1 measurements identified as High, Medium, or Low on Appendix 1.

5.4 Assessments are applicable to Tier-2 measures identified as High, Medium, or Low on Appendix 1 and are payable to the ~~Illinois~~Indiana State Treasury.

- 5.5 A CLEC wishing to be subject to Ameritech's Performance Remedy Plan tariffed with the ~~Illinois~~Indiana Commerce Utility Regulatory Commission must notify SBC/Ameritech and the Commission, in writing, of its intent to "opt-in" the Remedy Plan. Notice to Ameritech shall be made, in the cases in which a CLEC purchases out of the tariffed plan, at the place of notice designated by Ameritech in the tariff. In the cases in which a CLEC opts-in to the Plan through an Interconnection Agreement, notice shall be made to Ameritech's regulatory offices. The CLEC's "opt-in" becomes effective 20 days from the date of filing said written notice with the Commission, and it supersedes the Plan previously in effect for that CLEC. Payments shall be calculated in accordance with the Plan beginning with the first full calendar month following the effective date of the "opt-in." Voluntarily negotiated amendments also must be filed with the Commission, although such amendments are subject to Commission approval.

6.0 Procedural Safeguards and Exclusions

- 6.1 Ameritech agrees that the payment made, as provided for herein, is not intended to foreclose other non-contractual legal and regulatory claims and remedies that may be available to a CLEC. By incorporating these terms regarding payment into an interconnection agreement, Ameritech and CLEC agree that proof of damages from any "noncompliant" performance measure would be difficult to ascertain and, therefore, the payments made pursuant to the Plan are a reasonable approximation of any contractual damage resulting from a non-compliant performance measure. Ameritech and CLEC further agree that payments made to the CLEC under this provision are not intended to be a penalty.
- 6.2 Ameritech's agreement to implement these enforcement terms, and specifically its agreement to make payments pursuant to the Plan to CLEC or to the state of ~~Illinois~~Indiana, hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating to the same performance. Ameritech and CLEC agree that CLEC may not use: (1) the existence of this enforcement plan; or (2) Ameritech's payment of Tier-1 payments or Tier-2 payments as evidence that Ameritech has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Ameritech's conduct underlying its performance measures, and the performance data provided under the performance measures, however, are not made inadmissible by these terms. Any CLEC accepting this Plan agrees that Ameritech's performance with respect to this Plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. Further, any payment made by Ameritech under these provisions is not hereby made inadmissible in any proceeding relating to the same conduct where Ameritech seeks to offset the payment against any other damages a CLEC might recover; whether or not the nature of damages sought by the CLEC is such that an offset is appropriate will be determined in the related proceeding. The terms of this paragraph do not apply to any proceeding before the

Commission or the FCC to determine whether Ameritech has met or continues to meet the requirements of Section 271.

- 6.3 Every six months, CLEC may participate with Ameritech, other CLECs, and Commission representatives to review the performance measures to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measure to High, Medium, Low, Diagnostic, Tier-1 or Tier2. The criteria for reclassification of a measure shall be whether the actual volume of data points was lesser or greater than anticipated, whether the service is nascent or any other evidence establishing that the performance measure at issue is significantly inaccurate or changed from that reflected in the current Remedy Plan. Criteria for review of performance measures, other than for possible reclassification, shall be whether there exists an omission or failure, to capture intended performance, and whether there is duplication of another measurement. Performance measures for 911 may be examined at any six-month review to determine whether they should be reclassified. Any changes to existing performance measures and this Plan shall be by mutual agreement of the parties and, if necessary, with respect to new measures and their appropriate classification, by arbitration. The current measurements and benchmarks will be in effect until modified hereunder or expiration of the interconnection agreement.
- 6.4 CLEC and Ameritech shall consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to this document.

6.4.1 Annual Audit

Ameritech will participate in a comprehensive annual audit of its reporting procedures and reportable data. Ameritech will include all systems, processes and procedures associated with the production and reporting of performance measurement results. A third-party auditor will perform this audit. Ameritech and the CLECs will jointly select the third-party auditor. If the parties cannot agree on the auditor, the auditors selected by each party will jointly determine the auditor. Costs for these annual audits will be fully borne by Ameritech.

The comprehensive Annual Audits will be conducted every twelve (12) months, with the first such audit commencing twelve (12) months after the conclusion of the KPMG LSS Test's metric replication. Upon completion, Ameritech shall submit its annual comprehensive audit to the Commission and the CLECS participating in this Remedy Plan.

6.4.2 Mini-Audits

In addition to an annual audit, CLEC may request mini-audits of individual performance measures/submeasures during the year. When a CLEC has reason to believe the data collected for a measure are flawed or the reporting criteria for the measure are not being adhered to, it can request that a mini-audit be performed on the specific measure/submeasure upon written request, which will include the designation of a CLEC representative to engage in discussions with Ameritech about the requested miniaudit. If, thirty (30) days after the CLECs written request, the CLEC believes that the issue has not been resolved to its satisfaction, the CLEC can commence the mini-audit, after providing Ameritech with written notice five (5) days in advance. Each CLEC is limited to auditing three (3) single measures/submeasures during the audit year. The audit year shall commence with the start of the KPMG OSS test. Mini-audits may not be performed, conducted or requested while the OSS third-party test, or an Annual Audit is being conducted.

Mini-audits will be of all systems, processes and procedures associated with the production and reporting of performance measurement results for the audited measure/submeasure. Mini-audits will include two (2) months of data, and all parties agree that raw data supporting the performance measurement results will be made available, on a monthly basis, to the CLECs. [This is another place where the Commission may wish to add Mr. Henry's proposal for root cause analysis of raw data].

A third-party auditor, selected by the same method as described above, will conduct the mini-audits. The responsibility for paying the costs of such audits shall be wholly dependent on the result of the audit. A CLEC initiating a mini-audit that finds no culpability or misfeasance on Ameritech's part shall be fully responsible for bearing the cost of the mini-audit. In those instances where a CLEC requests a mini-audit which results in a finding that Ameritech has materially misreported or misrepresented data, or, Ameritech is found to have non-compliant procedures, Ameritech should bear responsibility for full payment of the costs of the mini-audit. Ameritech is deemed to be materially at fault when a reported successful measure changes as a consequence of the audit to a missed measure, or, when there is an increase in the ranking of the measure as a result of the audit, i.e., from low to medium or from medium to high, as a result of a material misreport or misrepresentation. Each party to the mini-audit shall bear its own internal costs, regardless of which party ultimately bears the cost of the third-party auditor.

Each mini-audit shall be submitted to the CLEC involved and to the Commission as a proprietary document. Ameritech will notify all CLECs of any mini-audit requests, on a monthly basis, within forty-five (45) days of the date of a mini-audit request.

All written notices pursuant to this provision include e-mail.

7.0 Exclusions Limited

7.1 Ameritech shall not be obligated to pay for noncompliance with a performance measurement, if, but only to the extent that, such noncompliance could not have been avoided by Ameritech in the exercise of due diligence. Ameritech shall not be excused from payment on any other grounds, except by application of the procedural threshold below. Any dispute regarding whether Ameritech's performance failure is excused under this paragraph shall be resolved with the Commission through a dispute resolution proceeding under the Commission's [The Commission may wish to consider adding language referring to the "Rocket Docket" expedited complaint procedures] ~~Procedural Rules~~, or, if the parties consent, through commercial arbitration with the Ameritech Arbitration Association. Ameritech shall have the burden of proof in any such proceeding to demonstrate that its noncompliance with the performance measurement should be excused because it could not have been avoided by Ameritech in the exercise of reasonable diligence. Section 7.1 only suspends Ameritech's ability to timely perform an activity subject to performance measurement, the applicable time frame in which Ameritech's compliance with the parity or benchmark criterion is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event. Upon commencement of the dispute resolution proceeding set forth above, Ameritech shall place the payments and/or Assessments in dispute in an interest-bearing escrow, to be held by a neutral third party. The outcome of the dispute resolution shall determine which party to that proceeding is entitled to the funds held in escrow, and the interest on those funds.

7.3 Ameritech and CLEC agree that there is an aggregate annual cap of 36% of Ameritech's net income, which serves as a threshold for certain other events, and does not act as a ceiling on any payments made by Ameritech. The annual cap amounts will be determined by the ~~IllinoisIndiana Commerce-Utility Regulatory~~ Commission, pursuant to an annually commenced docket, based on the formula of 36% of Ameritech's net return as is set forth at 1 436 and footnote 1332 of the FCC's December 22, 1999 Memorandum Opinion and Order in CC Docket No. 99-295. The annual cap shall be re-calculated on the first business day of the calendar year that updated ARMIS data is made publicly available. For purposes of applying the cap, the calendar year shall apply.

Once the annual cap is established, an aggregate monthly cap will be determined by dividing the amount of the annual cap by six. A monthly cap of \$60.24 million (\$361.45 million ÷ 6) for Tier-1 payments, serves as a threshold for certain other events, and does not act as a ceiling on the aggregate monthly payments made by Ameritech. [If the Commission opts to change the monthly cap, it would go here].

7.3.1 Whenever Ameritech makes Tier-1 payments to an individual CLEC in a given month exceeding \$3.76 million, or the aggregate Tier-1 payments to all CLECs in a given month exceeds the monthly cap, Ameritech may commence a show cause proceeding as provided for below. Upon timely commencement of the show cause proceeding, Ameritech must pay the balance of monies owed in excess of the threshold amount into an interest-bearing escrow, to be held by a neutral third-party, pending the outcome of the show cause proceeding. To invoke these escrow provisions, Ameritech must file

with the Commission, not later than the due date of the affected damages payments, an application to show cause why it should not be required to pay any amount in excess of the procedural threshold. Ameritech's petition shall be in the nature of an expedited dispute resolution under this paragraph pursuant to ~~Illinois~~Indiana ~~Commerce-Utility Regulatory Commission's~~ Procedural Rules. Ameritech will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make payment in excess of the applicable threshold amount. [If the Commission opts to eliminate entirely the ICC's monthly procedural per-CLEC cap, this paragraph, and the one following, should be mostly eliminated].

If Ameritech reports non-compliant performance to a CLEC for three consecutive months on 20% or more of the measures reported to the CLEC, but Ameritech has incurred no more than \$1.25 million in payments to the CLEC for that period under the enforcement terms set out here, then the CLEC may commence an expedited dispute resolution under this paragraph pursuant to ~~Illinois~~Indiana ~~Commerce-Utility Regulatory Commission~~ Procedural Rules. In any such proceeding, the CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Ameritech to make payments in excess of the amount calculated under these enforcement terms.

- 7.3.2 Ameritech should post on its Internet website the aggregate payments of any Tier 1 payments or Tier 2 Assessments.
- 7.4 With respect to any interconnection agreement, Ameritech and any CLEC may request two expedited dispute resolution proceedings pursuant to the two preceding paragraphs before the Commission or, if the parties agree, through commercial arbitration with the American Arbitration Association (AAA); during the term of the contract without having to pay attorneys' fees to the winning company. For the third proceeding and thereafter, the requesting party must pay attorneys' fees, as determined by the Commission or AAA, if that party loses.
- 7.5 In the event the aggregate total of Tier-1 payments and Tier-2 Assessments under all Ameritech interconnection agreements reaches the annual cap within a given year and Ameritech continues to deliver non-compliant performance during the same year to any CLEC or all CLECs, the Commission may recommend to the FCC that Ameritech should cease offering in-region inter-LATA services to new customers.
- 7.6 In the event that the aggregate total of Tier 1 payments and Tier 2 Assessments reaches the annual procedural threshold within the first nine months of a given year, the Commission shall commence an expedited investigation to determine, among other things, whether further payment/Assessment is/are warranted; whether the payment and/or Assessment amounts should be higher under the particular circumstances; why Ameritech's performance was substandard, or other issues.
- 7.7 Whenever Commission proceedings are initiated by any party, or by the Commission, any payments or Assessments that become due and owing, including penalties that are the subject of the Commission proceedings, shall be deposited by Ameritech into an interest-bearing escrow, to be held by neutral third-parties, during the pendency of the

Commission proceedings. In addition to the issues that are the subject of the Commission proceedings, if appropriate, the Commission shall determine whether the CLEC(s) and the State are entitled to the funds held in escrow, and, what parties should receive the interest. Except as is determined by the Commission in the preceding sentence, all parties are to bear their own litigation costs and expenses.

8.0 Tier-1 Damages Payable to CLECs

Tier-1 payments apply to measures designated in Appendix 1 as High, Medium, or Low when Ameritech delivers "non-compliant" performance as defined above.

- 8.1 Payments in the amount specified in the table below apply to all "non-compliant" sub-measures. Payments are calculated on a per occurrence basis, using the amount per occurrence taken from the table below, based on the designation of the measures as High, Medium, or Low in Appendix 1 and the number of consecutive months for which Ameritech has reported noncompliance for the sub-measure. For those measures listed on Appendix 3 as "Measurements that are subject to per occurrence damages or assessments with a cap," the amount of payments in a single month for a disaggregation category shall not exceed the amount listed in the table below for the "Per measurement" category. For those measures listed on Appendix 3 as "Measurements that are subject to per measure damages or assessment," payments are calculated on a per disaggregation category basis, at the amounts set forth in the table below. The methodology for determining the number of occurrences is addressed in "Methods of Calculating the Payment and Assessment Amounts" below.

PAYMENT TABLE FOR TIER-1 MEASURES

Per occurrence						
Measureme Group	Month 1	Month 2	Month 3	Month 4	Month 5	Mo and follo mo
High	\$300	\$500	\$1000	\$1200	\$1400	\$16
Medium	\$150	\$300	\$600	\$800	\$1000	\$12
Low	\$50	\$100	\$200	\$400	\$600	\$80
Per Measure/Cap*						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Mo and follo mo
High	\$50,000	\$100,000	\$150,000	\$200,000	\$250,000	\$30
Medium	\$20,000	\$40,000	\$60,000	\$80,000	\$100,000	\$12
Low	\$10,000	\$20,000	\$30,000	\$40,000	\$50,000	\$60

ASSESSMENT TABLE FOR TIER-2 MEASURES

Per occurrence
Measurement Group
High \$1000
Medium \$600
Low \$400

Per Measure/Cap*
Measurement Group
High \$150,000
Medium \$60,000
Low \$40,000

For per occurrence with cap measures, the occurrence value is taken from the per occurrence table, subject to the per measure with cap amount.

9.0 **Tier-2 Assessments to the State:**

9.1 Assessments payable to the ~~Illinois~~Indiana State Treasury apply to the Tier-2 measures designated in Appendix 1 as High, Medium, or Low when Ameritech performance is out of parity or does not meet the benchmarks for the aggregate of all CLEC data. Specifically, if the Z-test value is greater than the Critical Z, the performance for the reporting category is out of parity or below standard. Assessments will be paid when the aggregate of all CLECs has at least 10 observations.

9.2 For those measurements where a per-occurrence assessment applies, an Assessment as specified in the Assessment Table for each occurrence is payable into the ~~Illinois~~Indiana State Treasury for each sub-measure that exceeds the Critical Z-value, for three consecutive months. For those Measurements listed in Appendix 3 as measurements subject to per occurrence with a cap, an Assessment as shown in the Assessment Table above for each occurrence with the applicable cap is payable into the ~~Illinois~~Indiana State Treasury for each sub-measure that exceeds the Critical Z-value, for three consecutive months. For those Tier-2 Measurements listed in Appendix 3 as subject to a per measurement assessment, an Assessment amount as shown in the Assessment Table above is payable into the ~~Illinois~~Indiana State Treasury for each sub-measure that exceeds the Critical Z-value, for three consecutive months.

9.3 The critical Z-value is defined in Sections 3.1 and 4.1 above.

10.0 **General Assessments:**

10.1 If Ameritech fails to submit performance reports by the 20th day of the month, the following assessments apply unless excused for good cause by the Commission:

If no reports are filed, \$5,000 per day past due;

If incomplete reports are filed, \$1,000 per day for each missing performance result.

- 10.2 If Ameritech alters previously reported data to a CLEC, and after discussions with Ameritech the CLEC disputes such alterations, then the CLEC may ask the Commission to review the submissions and the Commission may take appropriate action. This does not apply to the limitation stated under the section titled "Exclusions Limited."
- 10.3 When Ameritech's performance creates an obligation to make a payment to a CLEC or pay an Assessment to the State under the terms set forth herein, Ameritech shall make payment in the required amount on or before the 30th day following the due date of the performance measurement report for the month in which the obligation arose (e.g., if Ameritech's performance through March is such that Ameritech owes a CLEC for March performance, or Assessments to the State for January - March performance, then those payments will be due May 20, thirty (30) days after the April 20 due date for reporting March data). For each day after the due date that Ameritech fails to pay the required amount, Ameritech will pay interest to the CLEC at the maximum rate permitted by law for a past due amount and will pay an additional \$3,000 per day to the Illinois Indiana State Treasury for a past due Assessment.
- 10.4 Ameritech may not withhold payments to a CLEC unless Ameritech has commenced dispute resolution proceedings on or before the payment due date, pursuant to one of the provisions in Section 7 of this Document.
- 10.5 CLEC will have access to monthly reports on performance measures and business rules through an Internet website that includes individual CLEC data, aggregate CLEC data, and Ameritech's or its affiliate's data.

11.0 Methods of Calculating the Liquidated Damage and Assessment Amounts

The following methods apply in calculating per occurrence payments and Assessments:

11.1 Calculating Tier-1 Payments

11.1.1 Measures for Which the Reporting Dimensions are Averages or Means

- Step 1: Calculate the average or the mean for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated average or mean equals the benchmark standard. Substitute this value for the value calculated in the previous sentences.)

- Step 2: Calculate the percentage difference between the actual average and the calculated average. This percentage is capped at 100%.
- Step 3: Multiply the total number of data points by the percentage calculated in the previous step and round this number up to the next integer. Then multiply the result by the per occurrence dollar amount taken from the Tier 1 Payment Table to determine the applicable payment amount for the given month for that sub-measure.

11.1.2 Measures for Which the Reporting Dimensions are Percentages

- Step 1: Calculate the percentage for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated percentage equals the benchmark standard. Substitute this value for the value calculated in the previous sentences.)
- Step 2: Calculate the difference between the actual percentage for the CLEC and the calculated percentage.
- Step 3: Multiply the total number of data points by the difference in percentage calculated in the previous step and then round this number up to the next integer. Then multiply the result by the per occurrence dollar amount taken from the Tier 1 Payment Table to determine the applicable Tier 1 payment for the given month for that sub-measure.

11.1.3 Measures for Which the Reporting Dimensions are Ratios or Rates.

- Step 1: Calculate the ratio for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure.
- Step 2: Calculate the difference between the actual ratio for the CLEC and the calculated ratio. This difference is capped at 100%.
- Step 3: Multiply the total number of data points by the percentage calculated in the previous step and then round this number up to the nearest integer. Then multiply the result by the per occurrence dollar amount taken from the Tier 1 Payment Table to determine the applicable Tier 1 payments for the given month for that sub-measure.

11.2 Tier 2 Liquidated Assessments

Determine the Tier-2 measurement results, such as High, Medium, or Low, that are non-compliant for three consecutive months for all CLECs.

If the non-compliant classification continues for three consecutive months, an additional assessment will apply in the third month and in each succeeding month as calculated below, until Ameritech reports performance that meets the applicable criterion. That is, Tier-2 assessments will apply on a "rolling three month" basis, one assessment for the average number of occurrences for months 1-3, one assessment for the average number of occurrences for months 2-4, one assessment for the average number of occurrences for months 3-5, and so forth, until satisfactory performance is established.

11.2.1 Measures for Which the Reporting Dimensions are Averages or Means.

- Step 1: Calculate the average or the mean for the sub-measure for the CLECs that would yield the Critical Z-value for each of the three non-compliant months. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated average or mean equals the benchmark standard. Substitute this value for the value calculated in the previous sentences.)
- Step 2: Calculate the percentage difference between the actual average and the calculated average for each of the three non-compliant months. This percentage is capped at 100%.
- Step 3: Multiply the total number of data points for each month by the percentage calculated in the previous step. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by \$1000, \$600, and \$400 for Measures that are designated as High, Medium, and Low respectively to determine the applicable Assessment payable to the ~~Illinois~~Indiana State Treasury for that submeasure.

11.2.2 Measures for Which the Reporting Dimensions are Percentages.

- Step 1: Calculated the percentage for the sub-measure for the CLECs that would yield the Critical Z-value for each of the three non-compliant months. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated percentage equals the benchmark standard. Substitute this value for the value calculated in the previous sentences.)

- Step 2: Calculate the difference between the actual percentage for the CLECs and the calculated percentage for each of the three non-compliant months.
- Step 3: Multiply the total number of data points for each month by the difference in percentage calculated in the previous step. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by \$1000, \$600, and \$400 for measures that are designated as High, Medium, and Low respectively to determine the applicable Assessment for that sub-measure.

11.2.3 Measures for Which the Reporting Dimensions are Ratios or Rates.

- Step 1: Calculate the ratio for the sub-measure for the CLECs that would yield the Critical Z-value for each of the three non-compliant months. Use the same denominator as the one used in calculating the Z-statistic for the sub-measures. (For benchmark measures, calculate the value that would yield parity by adding or subtracting the Critical Z-value to the benchmark as appropriate, subject to 4.0 and the Business Rules.)
- Step 2: Calculate the difference between the actual ratio for the CLECs and the calculated ratio for each month of the non-compliant three-month period. This difference is capped at 100%
- Step 3: Multiply the total number of data points by the percentage calculated in the previous step for each month. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by \$1000, \$600, and \$400 for measures that are designated as High, Medium, and Low respectively to determine the applicable Assessment for that sub-measure.

12.0 **Advanced and Nascent Services**

- 12.1 In order to ensure parity and benchmark performance where CLECs order low volumes of advanced and nascent services, Ameritech will make additional voluntary payments into the ~~Illinois~~Indiana State Treasury on those measurements listed in §12.2 below (the "Qualifying Measurements"). Such additional voluntary payments will apply only when there are more than 10 and less than 100 observations for a Qualifying Measurement on average statewide for a three-month period with respect to the following order categories (if within a Qualifying Measurement):

- UNE loop and port combinations;
- Resold ISDN;
- ISDN UNE loop and port combinations;

- BRI loop with test access;

12.2 The Qualifying Measurements are as follows:

Provisioning Measurements:

- and DSL loops.
 - PM 55.1 -Average Installation Interval - DSL
 - PM 57 - Average Response Time for Loop Qualification Information

Maintenance Measurements:

- PMs 29, 45, 58 - Percent Ameritech Caused Missed Due Dates
- PMs 35, 46, 59 - Installation Trouble Reports Within "X" Days

12.3 The additional voluntary payments referenced in §12.1 will be made only if Ameritech fails to provide parity or benchmark service for the above measurements as determined by the use of the Modified Z-test and critical Z-value for either:

- three consecutive months; or
- six months or more in a calendar year.

12.4 The additional voluntary payments will only be calculated on the rolling average of occurrences or measurements, as appropriate, where Ameritech has failed to provide parity or benchmark performance for three consecutive months. If Ameritech fails to provide parity or benchmark performance in ~~Illinois~~Indiana for six or more months in a calendar year, the voluntary payments will be calculated as if all such months were missed consecutively.

12.5 If, for the three months that are utilized to calculate the rolling average, there were 100

- PMs 27, 43, 56 - Mean Installation Interval
- PMs 32, 49, 62 - Average Delay Days for Ameritech-Caused Missed Due Dates
- PMs 38, 66, 68 - %Missed Repair Commitments
- PMs 41, 53, 69 - % Repeat Reports
- PMs 39, 52, 67 - Mean Time to Restore
- PMs 37, 54, 65 - Trouble Report Rate

| additional payments into the ~~Illinois~~Indiana State Treasury by first applying the normal Tier 2 assessment calculation methodology to that qualifying measurement, and then tripling that amount.

12.6 Any payments made hereunder shall be subject to the annual cap set forth in § 7.3.

13.0 Attached hereto, and incorporated herein by reference, are the following Appendices:

| Appendix 1: Performance Measurement Business Rules (~~Illinois~~Indiana)

Appendix 2: Performance Measures Subject to Tier-I and Tier-2 Damages Identified as High, Medium, or Low.

Appendix 3: Measurements Subject to Per Occurrence Calculation of Payments or Assessment with a Cap and Measurements Subject to Per Measure Payments or Assessment.

IURC Cause No. 41657

Exhibit 2

**Testimony and Briefs
Of
Illinois Commerce Commission Staff
In
Illinois Docket No. 01-0120**

DIRECT TESTIMONY
OF
MELANIE K. PATRICK, PH.D.
POLICY ANALYST

STAFF OF THE TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

RESOLUTION OF DISPUTED ISSUES
PURSUANT TO CONDITION 30 OF
THE SBC/AMERITECH MERGER ORDER

DOCKET NO. 01-0120

JULY 13, 2001

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IURC Cause No. 41657

File Date: 8-2-02

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